

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 17**

STAHL SPECIALTY COMPANY

and

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL #1464
affiliated with the INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO**

Case 17-CA-088639

**RESPONDENT STAHL SPECIALTY COMPANY'S EXCEPTIONS TO
THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46(a) & (b)(1) of the Board's Rules and Regulations, Respondent Stahl Specialty Company (hereinafter "Stahl" or "Respondent") hereby submits the following Exceptions to the Findings of Fact, Conclusions of Law, and recommended Order contained within the Decision of Administrative Law Judge Christine E. Dibble, dated September 30, 2013, as purportedly ratified and adopted by the Order Ratifying and Adopting Decision of Administrative Law Judge Christine E. Dibble, dated April 22, 2016.

1. Respondent excepts to the issuance of the Complaint and proceedings in this matter, as Acting General Counsel Lafe Solomon lacked authority by virtue of the circumstances of his appointment and provisions of the Federal Vacancies Reform Act of 1998 (FVRA), 5 U.S.C. §§ 3345 *et seq.*, as explained in detail in *SW General, Inc. v. NLRB*, 796 F.3d 67 (D.C. Cir. 2015).
2. Respondent excepts to the issuance of the Complaint and proceedings in this matter, and to the Board's conclusion of waiver with regard to Respondent's objections concerning Acting General Counsel Lafe Solomon's lack of authority, as Respondent previously and sufficiently objected that Acting General Counsel Lafe Solomon lacked authority.

3. Respondent excepts to the actions of the General Counsel and Administrative Law Judge in reaffirming the decisions of their predecessors and/or their own improperly issued decisions.
4. Respondent excepts to the actions of the General Counsel and Administrative Law Judge in reaffirming the decisions of their predecessors and/or their own improperly issued decisions as violative of Respondent's due process and other rights, in that Respondent was excluded from such decisions and did not have an opportunity to be heard with regard to comments or objections to such unilateral actions.
5. Respondent objects to the issuance of the Complaint and all other proceedings in this matter, as Acting General Counsel Laff Solomon lacked authority to do so by virtue of his unconstitutional appointment by the President.
6. Respondent objects to the issuance of the Decision in this matter, as the Administrative Law Judge ("ALJ") was appointed by an unconstitutionally-comprised National Labor Relations Board.
7. Respondent excepts to paragraph 1(a) of the Order (32:22-24) and the related Conclusion No. 3 (31:11-12) that Respondent discharged Patrick Armstrong because he engaged in union and protected concerted activities, as it erroneously connects an alleged "inadequate investigation" (19:19) with alleged discriminatory animus on behalf of Respondent.
8. Respondent excepts to the ALJ's finding at page 4, note 16, that "leads infrequently operate machines," as it is irrelevant to the fact that Armstrong did not operate a machine.
9. Respondent excepts to the ALJ's findings at 5:1-2 that Armstrong "solicited union authorization cards [and] discussed the benefits of unionization with employees," as they are unsupported by the evidence cited and mischaracterize Armstrong's testimony.

10. Respondent excepts to the ALJ's finding at 4:28-29 that "Armstrong played a dominant role in the union campaign at issue," as it is unsupported by the record evidence cited and mischaracterizes Armstrong's testimony.
11. Respondent excepts to the ALJ's finding at 5:2 that Armstrong engaged in handbilling, as it mischaracterizes Armstrong's testimony.
12. Respondent excepts to the ALJ's failure to find that Armstrong did not handbill for Charging Party prior to his discharge.
13. Respondent excepts to the ALJ's failure to find that, by his own admission, the only action Armstrong had taken to openly identify himself as a union supporter while employed by Respondent was to talk with organizer Jerry Gulizia after work while Gulizia was handbilling.
14. Respondent excepts to the ALJ's findings at 5:6-7 that Maintenance Manager Jerry Helms and Foundry Supervisor John McBride reported "rumors" to Venkatesan "[o]n May 2," as there is no evidence that Respondent knew whether Armstrong specifically had been invited to a union meeting.
15. Respondent excepts to the ALJ's findings at 5:7-8 that Helms and McBride told Venkatesan that "several of the employees in the maintenance department had been invited to a union organization meeting over the weekend," as it is irrelevant to a finding of whether Armstrong himself attended the meeting.
16. Respondent excepts to all of the ALJ's findings in Section E, 6:4-37, to the extent they are relied upon to support a finding of unlawful surveillance, as all such findings merely reflect Respondent's observations of the IBEW's open and notorious handbilling.

17. Respondent excepts to the ALJ's finding at 5:30-31 that Helms told Spalding that "an individual in his department had been invited to a union organizational meeting over the weekend," as it mischaracterizes Spalding's testimony on this issue.
18. Respondent excepts to the ALJ's findings at 5:35-39 that Wilkins was involved in both a meeting with Respondent's attorney on May 2 and also helped draft the script of the speech given by Spalding on May 8 and July 25-26, as they are unsupported by the evidence cited and irrelevant to a finding of anti-union animus.
19. Respondent excepts to the ALJ's finding at 5:42 that Delk wanted to be kept informed about "the pace of the organizing campaign," as it is unsupported by the evidence and is irrelevant to a finding of anti-union animus.
20. Respondent excepts to the ALJ's findings at 5:46 and 6:1-2 that CP Ex. 9 at pp. 2-6 supports her finding that Spalding "continued to work with his management team to encourage the employees' [sic] to reject unionization of the plant," as these emails concern only Spalding's preparations for his May 8 speech.
21. Respondent excepts to all of the ALJ's findings in Section D at 5:4 – 6:2 to the extent that she relied on any of them to support her finding that Respondent was motivated by anti-union animus, as the law allows employers to respond to union organizing campaigns.
22. Respondent excepts to the ALJ's finding at 5:31-33 that McBride told Spalding "several workers were talking about [the union campaign]" because it fails also to find that Spalding never testified that McBride gave him any names, and counsel for Charging Party did not press him on this point.
23. Respondent excepts to paragraph 2(a) of the Order (32:39 – 33:2) requiring Respondent to reinstate Patrick Armstrong.

24. Respondent excepts to paragraph 2(b) of the Order (33:4-6) requiring Respondent to make Patrick Armstrong whole for any loss of earnings and other benefits suffered as a result of the alleged discrimination against him.
25. Respondent excepts to paragraph 1(c) of the Order (32:28) and the related Conclusion No. 4 (31:14-16) that Respondent engaged in surveillance of employees' union or other protected concerted activities, as it is unsupported by the record evidence.
26. Respondent excepts to the ALJ's finding at page 6, note 17, that there was "no evidence to corroborate [Spalding's] testimony that an unidentified employee complained to Adams about people handbilling on company property," as it is unsupported by the record evidence cited.
27. Respondent excepts to the ALJ's finding at 6:16-18 that "unknown" men watched Gulizia while he was handbilling, as this finding is based upon an erroneous conclusion.
28. Respondent excepts to the ALJ's finding at 6:21-22 that Venkatesan "admits he was aware of handbilling occurring every Tuesday," as it is irrelevant to a finding of unlawful surveillance.
29. Respondent excepts to the ALJ's findings at 6:22-23 and 25:32-33 that Venkatesan "watched the handbilling activity from the window to the east of the foundry" to the extent it is relied upon to support a finding of surveillance, as the ALJ failed also to find that because that area of Respondent's plant was undergoing construction at the time, Venkatesan ordinarily spent time near those windows.
30. Respondent excepts to the extent the ALJ bases many of her findings in Section E on Venkatesan's testimony, whereas she later derides his credibility.

31. Respondent excepts to the ALJ's finding at 6:30-33 that emails exchanged between salaried employees of Respondent on days during which the union handbilled are evidence of surveillance.

32. Respondent excepts to the ALJ's finding at 6:33-34 that "[o]n an almost weekly basis" employees would give handbills to salaried employees of Respondent to the extent it was relied upon to support a finding of unlawful surveillance.

33. Respondent excepts to the ALJ's finding at page 6, note 17, that there was "no evidence that [Spalding] had first-hand knowledge of Adam's [sic] role in the handbilling surveillance," as it directly conflicts with her finding at 6:36-37 that "Spalding told Adams to investigate and ensure there was no handbilling on company property."

34. Respondent excepts to paragraph 1(d) of the Order (32:28) and the related Conclusion No. 5 (31:18-20) that Respondent threatened employees with facility closure if they selected the Union as their collective bargaining representative, as it is unsupported by the record evidence.

35. Respondent excepts to the ALJ's findings at 7:9-27 to the extent relied upon to support a finding that Respondent threatened to close the plant, as these remarks are all true statements about Respondent's business preferences.

36. Respondent excepts to the ALJ's finding at 7:29-30 to the extent relied upon to support a finding that Respondent threatened to close the plant, as this remark merely restates the law.

37. Respondent excepts to the ALJ's finding at 7:33-35 to the extent relied upon to support a finding that Respondent threatened to close the plant, as it mischaracterizes the remark.

38. Respondent excepts to the ALJ's finding at 7:38-39 that Spalding gave the speech a second time to "reemphasize Respondent's desire to keep the plant non-union," as it is irrelevant to a finding of an unlawful threat to close the plant.

39. Respondent excepts to the ALJ's finding at 7:44-45 that Spalding's speech was about "the negative impact unions would have on the operation of Respondent's business," as it mischaracterizes true remarks about Respondent's business preferences.

40. Respondent excepts to the ALJ's finding at 8:3-4 that "Armstrong also told Stewart that speaking against Spalding's points in the meeting would have been counterproductive," as it is an erroneous and unnecessary reinterpretation of testimony.

41. Respondent excepts to the ALJ's finding at page 8, note 18, that Stewart "relied on closed questions and answers to deny the occurrence of the discussion," as it is irrelevant to the fact that Stewart contradicted Armstrong's testimony on this same point.

42. Respondent excepts to the ALJ's finding at page 8, note 19, and page 9, note 20, concerning Spalding's credibility as a witness.

43. Respondent excepts to the ALJ's finding at page 9, note 20, that she didn't believe that Spalding didn't press Harrison for details about the substance of the union's informational meeting because "rumors of a union was [sic] an important event," as it erroneously conflates testimony that Respondent was interested in gathering information regarding rumors that a union campaign was being organized with testimony regarding which specific employees supported that campaign.

44. Respondent excepts to the ALJ's findings at 11:9-18 concerning the number and content of postings by Respondent, as they are irrelevant to a determination as to whether the content of the single flyer in question violated the Act.

45. Respondent excepts to the ALJ's finding at 11:22-24 to the extent that this language was relied upon to support a finding that Respondent posted unlawful literature.

46. Respondent excepts to the ALJ's finding at 11:29 that Armstrong was merely "lead," since his job title was Production Operator, implying that he could be asked to run machines.
47. Respondent excepts to the ALJ's finding at 11:29-31 that Armstrong would contact Stowell for "assistance," as it mischaracterizes Armstrong's complete testimony and is unsupported by the evidence.
48. Respondent excepts to the ALJ's finding at 11:31-33 that Armstrong would call Moore at home on technical issues because she failed also to find that Armstrong did *not* call Moore at home when Armstrong realized that the A81 was allegedly out of parts on August 26, 2012.
49. Respondent excepts to the ALJ's finding at page 12, note 25, that there is "no corroborating evidence" for Stewart's contention that he sent Armstrong a text message explicitly directing Armstrong to run a machine, as this is irrelevant to a finding that Armstrong deliberately did not follow instructions on the night of August 26.
50. Respondent excepts to the ALJ's finding at page 12, note 28, that "Venkatesan failed to persuasively explain how he would have had first-hand knowledge about the availability of parts for the A81," as it is unsupported by the record.
51. Respondent excepts to the ALJ's finding at 12:22-23 that there were not enough parts, as Venkatesan directly contradicted Armstrong's testimony based on his inspection of the machining area before C shift began on the night of August 26.
52. Respondent excepts to the ALJ's finding at 13:2-4 that "the A81 machine was not ready for operation," as it mischaracterizes Armstrong's testimony.
53. Respondent excepts to the ALJ's finding at 13:5-6 that Armstrong left Stewart a voice mail "explaining the reason he could not operate the A81 machine," as it is unsupported by the record evidence.

54. Respondent excepts to the ALJ's finding at 13:11-12 that Armstrong "assign[ed] each C-shift worker to run one or more machines per Stewart's instructions," as it is unsupported by the record evidence cited.
55. Respondent excepts to the ALJ's finding at 13:19-20 that "Armstrong updated Moore on the status of the machines and the work he performed that night," as it mischaracterizes Armstrong's testimony and is unsupported by the record evidence cited.
56. Respondent excepts to the ALJ's finding at 14:38-39 that Stowell did not have enough time to follow up on Armstrong during the night of August 26-27, 2012, as that excuse was perfectly acceptable when offered by Armstrong.
57. Respondent excepts to the ALJ's finding at 15:4-5 that "[d]iscipline is normally meted out in this order," as it is unsupported by the record evidence.
58. Respondent excepts to the ALJ's failure to find that four other employees were terminated in 2011-2012 without having been through all steps in Respondent's progressive disciplinary policy. Resp. Ex. 6.
59. Respondent excepts to the ALJ's findings at page 15, note 32, regarding Armstrong's March 2012 warning for attendance, as it is irrelevant to a finding of anti-union animus.
60. Respondent excepts to the ALJ's failure to find that Armstrong's June 29, 2012 warning clearly stated that "In situations where there is equipment down, manpower issues, or employee issues, you need to be communicating with the Foundry Shift Supervisor." Resp. Ex. 6.
61. Respondent excepts to the ALJ's findings at 15:16-22 regarding "progressive corrective action" language, as it is irrelevant given the ALJ's earlier finding (at 15:5-6) that the Handbook explicitly states that Stahl "reserves the right to determine appropriate level of action to be taken on a case by case basis in consideration of the circumstances involved."

62. Respondent excepts to the ALJ's finding at page 15, note 34, concerning Armstrong's warning for underproduction in March 2012 and accompanying testimony, as it is irrelevant to a finding of anti-union animus.
63. Respondent excepts to the ALJ's failure to find at page 15, note 34, that the same testimony and warning prove that Armstrong ran a machine on the day in question.
64. Respondent excepts to the ALJ's finding at 15:12-13 regarding Armstrong's warning for underproduction on June 29, 2012, as it fails also to find that this warning is another example of Armstrong's insubordination and tendency to disrupt production.
65. Respondent excepts to the ALJ's failure to make a credibility determination on the testimony of Charles Collins.
66. Respondent excepts to the ALJ's finding at 15:29-30 regarding the two warnings of which Wilkins was originally unaware, since it fails to find also that Armstrong did not dispute his receipt of these warnings.
67. Respondent excepts to the ALJ's finding at 16:6-9 concerning the content of Armstrong's termination letter, as it fails to find also that the letter explicitly stated that "Violations of work rules or other breaches of conduct which, in the judgment of Stahl Specialty Company, are inappropriate or detrimental to our business can result in disciplinary action up to and including termination."
68. Respondent excepts to the ALJ's finding at 17:37-38 that Respondent violated Sections 8(a)(1) and 8(a)(3) of the Act by discharging Armstrong, as it is unsupported by the evidence.
69. Respondent excepts to the ALJ's finding at 17:42 – 18:1 that it is "undisputed" that Armstrong "discussed the benefits of unionization with employees," as this finding is unsupported by any record evidence.

70. Respondent excepts to the ALJ's finding at 17:42 – 18:1 that it is "undisputed" that Armstrong "engaged in handbilling," as it mischaracterizes the testimony and is unsupported by the record evidence.
71. Respondent excepts to the ALJ's failure to find that it is undisputed that Armstrong did not handbill prior to his discharge. Tr. 202:25 – 203:2; 309:1-3.
72. Respondent excepts to the ALJ's failure to find that the only action Armstrong had taken to openly identify himself as a union supporter while employed by Respondent was to talk with organizer Jerry Gulizia after work while *Gulizia* was handbilling. Tr. 309:1-12.
73. Respondent excepts to the ALJ's finding at 17:42 – 18:1 that Armstrong "solicited union authorization cards," as it is unsupported by the record evidence.
74. Respondent excepts to the ALJ's finding at 18:5-6 that Respondent knew of Armstrong's protected union and concerted activity, as it is unsupported by the record evidence.
75. Respondent excepts to the ALJ's findings at page 18, note 36, that counsel for Charging Party's question "During the course of the union's campaign, did you report this information back to anyone in the company?" was "unambiguous," as it is unsupported by record evidence.
76. Respondent excepts to the ALJ's finding at page 18, note 36, that "[t]he meeting occurred the week of May 2," as it is unsupported by the record evidence.
77. Respondent excepts to the ALJ's finding at page 18, note 37, that a ruling on the credibility of Spalding's and Venkatesan's testimony on the point as to whether McBride told Venkatesan that Armstrong was involved with the union was apparently unnecessary, as their testimony corroborates McBride's completely.

78. Respondent excepts to the ALJ's finding at 18:16-17 that "Respondent had knowledge of Armstrong's protected union activity at the time a decision was made to discharge him," as it is unsupported by the evidence.

79. Respondent excepts to the ALJ's finding at 18:21-22 that Respondent's discharge of Armstrong was motivated by discriminatory animus, as it is unsupported by the record evidence.

80. Respondent excepts to the ALJ's finding at 19:3-4 that Respondent "intentionally failed to adequately address the charges against Armstrong that led to his termination," as it is unsupported by the record evidence.

81. Respondent excepts to the ALJ's finding at 19:4-6 that "Respondent's refusal to follow its progressive disciplinary policy against Armstrong" is evidence of unlawful motive.

82. Respondent excepts to the ALJ's finding at 19:7 that Respondent's investigations were not "fair and meaningful," as it is unsupported by the record evidence.

83. Respondent excepts to the ALJ's finding at 19:18-19 that Respondent "deliberately conducted an inadequate investigation into the charges against Armstrong," as it is unsupported by the record evidence.

84. Respondent excepts to the ALJ's finding at 19:21-22 that "prior to conducting any investigation [Venkatesan] 'absolutely' felt that Armstrong should be terminated," as this finding is contradicted by the ALJ's findings in this same paragraph regarding Venkatesan's investigation.

85. Respondent excepts to the ALJ's finding at 19:24-25 that Venkatesan spent only "five minutes" reviewing the machining department, as it is irrelevant to a finding concerning the fairness and adequacy of Respondent's investigations.

86. Respondent excepts to the ALJ's finding at 19:33-34 that it is "undisputed that prior to August 26, Venkatesan had never given Stowell instructions to convey to Armstrong or any other lead," as it is unsupported by the record evidence.

87. Respondent excepts to the ALJ's finding at 19:35-37 that "[i]t is suspicious that soon after he learned of Armstrong's unionizing activity, Venkatesan would tell Stowell to instruct Armstrong to perform a specific task, especially a task that leads rarely perform," as it is unsupported by the record evidence.

88. Respondent excepts to the ALJ's failure to find that Venkatesan's instructions, through Stowell, reinforced instructions Armstrong had already received from Stewart.

89. Respondent excepts to the ALJ's failure to find that Respondent was expediting Volvo and Mercury parts during the weekend in question.

90. Respondent excepts to the ALJ's finding at 19:37-43 that Venkatesan's testimony regarding needing Armstrong to run a machine due to a C shift employee's absence is "[im]plausible," as it is unsupported by the record evidence.

91. Respondent excepts to the ALJ's finding at 19:33-44 concerning whether Venkatesan told Stowell to tell Armstrong to run a machine and the import of CP Ex. 5, as it is irrelevant to a finding concerning the fairness and adequacy of Respondent's investigations.

92. Respondent excepts to the ALJ's finding at 20:1-3 that Venkatesan "had determined Armstrong should be fired based on nothing more than an email from Stowell sent within about an [sic] 1 ½ hours into Armstrong's shift noting he had failed to operate a machine," as it is followed by no citation to any record evidence.

93. Respondent excepts to the ALJ's finding at 20:8-9 that Venkatesan "saw a few chip baskets behind 2 of the 7 machines and assumed Armstrong had not emptied them," as it mischaracterizes Venkatesan's further testimony.
94. Respondent excepts to the ALJ's finding at 20:9-10 that Venkatesan "admitted that the baskets could have been filled by an employee on another shift after they had been emptied by Armstrong," as it is unsupported by the record evidence cited.
95. Respondent excepts to the ALJ's finding at 20:11-14 that Venkatesan failed to provide persuasive and/or corroborating testimony about the parts that were available to run on "the A77 or A81 machines," as it is irrelevant what parts were available to run on the A77.
96. Respondent excepts to the ALJ's finding at 20:14-17 regarding the production efficiency on C shift, as it is irrelevant to a finding concerning the fairness and adequacy of Respondent's investigations.
97. Respondent excepts to the ALJ's finding at 20:21-22 that neither Venkatesan nor Stewart interviewed Armstrong, as it is unsupported by the record evidence.
98. Respondent excepts to the ALJ's finding at 20:22-25 that Timmons' testimony corroborated Armstrong's, as it is irrelevant to a finding concerning the fairness and adequacy of Respondent's investigations.
99. Respondent excepts to the ALJ's finding at 20:26-27 that "Tucker testified, without contradiction, that he never saw Armstrong not working that evening," as it is unsupported by the record evidence.
100. Respondent excepts to the ALJ's finding at 20:28-30, as it incompletely characterizes Ridge's testimony.

101. Respondent excepts to the ALJ's finding at 20:35-37 that Venkatesan and Stewart "intentionally" refused to interview the other members of C shift, as it fails to find that there were other methods of determining what Armstrong had done.

102. Respondent excepts to the ALJ's finding at 21:1-2 that Armstrong would "provide Moore with a detailed account of the work he performed and the status of work to be completed by the next shift," as it is unsupported by the evidence cited.

103. Respondent excepts to the ALJ's finding at 21:4-5 that Moore was "the only manager to speak with Armstrong immediately after his shift, [and] was in a position to see and assess what work had been completed on Armstrong's shift before it was tainted by the employees working the next shift," as it is unsupported by the evidence.

104. Respondent excepts to the ALJ's finding at 21:20-22 that Venkatesan gave no credible explanation as to how two or more hours into the A-shift he could distinguish between tasks that were not completed on the C shift versus work generated by the A shift, as it is irrelevant to a finding concerning the fairness and adequacy of Respondent's investigations.

105. Respondent excepts to the ALJ's finding at 21:31 that Venkatesan testified there were 400 Hubbell handles from Friday's shift, as it is unsupported by the record evidence cited.

106. Respondent excepts to the ALJ's finding at 21:32-35 that Venkatesan testified "after less than 10 minutes of review, that there were not enough Hubbell handles in need of buffing to justify the amount of time Armstrong said he had spent buffing them," as it is unsupported by the record evidence.

107. Respondent excepts to the ALJ's finding at 21:35-37 that "Timmons . . . corroborated Armstrong's testimony on this point," as it is unsupported by the record evidence.

108. Respondent excepts to the ALJ's finding at 21:39-41 that Stewart conducted a "cursory examination," as it is purely the ALJ's opinion.

109. Respondent excepts to the ALJ's finding at 22:4-8 regarding whether the handles needed buffing and how many had actually been buffed, as it is irrelevant to a finding concerning the fairness and adequacy of Respondent's investigations.

110. Respondent excepts to the ALJ's finding at 22:11-12 that Stewart "concedes that the lead does not usually operate a machine," as it is irrelevant to a finding concerning the fairness and adequacy of Respondent's investigations.

111. Respondent excepts to the ALJ's finding at 22:18-20 that there was no evidence Armstrong was trained to switch over parts, "nor that he was authorized or instructed to perform this function on the night at issue," as it is unsupported by the record evidence.

112. Respondent excepts to the ALJ's finding at 22:27-29 that Venkatesan provided no evidence that he had first-hand knowledge that the machining area was not in disarray at the beginning of the C shift, as it is unsupported by the evidence.

113. Respondent excepts to the ALJ's finding at 23:10-11 that Respondent's failure to follow its progressive disciplinary policy is evidence of discriminatory animus, as it is unsupported by the record evidence.

114. Respondent excepts to the ALJ's finding at page 23, note 40, that "McBride did not dispute that he told Armstrong it was the Respondent's policy to limit the length of time discipline remained on employees' records to a year," as it is irrelevant.

115. Respondent excepts to the ALJ's finding at page 23, note 40, that "Venkatesan, Spalding, and Wilkins testified that it was not the Respondent's policy to remove discipline from

employees' files after a year," as it is unsupported by a citation to any record evidence, mischaracterizes witnesses' testimony, and is irrelevant.

116. Respondent excepts to the ALJ's finding at 23:23-25 that Wilkins testified "unconvincingly" that she changed her recommendation after learning of two more disciplines Armstrong had received, as it is irrelevant to the fact that she did actually change her mind.

117. Respondent excepts to the ALJ's finding at 23:28-30 that Wilkins "appeared confused by the entire rush to terminate Armstrong," as it is irrelevant to Respondent's decision to terminate.

118. Respondent excepts to the ALJ's finding at 23:30-32 that Stowell's excuse that "he had other duties to take care of that evening" was not a "convincing response" to his failure to approach Armstrong and tell him to clock out and go home for not operating a machine, as it fails to find further that Armstrong's excuse that he was "too busy" with his other duties was similarly not a "convincing response" to his failure to run a machine on August 26-27.

119. Respondent excepts to the ALJ's finding at 24:1-4 that "Armstrong and the other employees working the C-shift the date at issue credibly testified that after his initial conversation with Armstrong, they did not see Stowell again for the remainder of the night," as it is not supported by a citation to any record evidence.

120. Respondent excepts to the ALJ's finding at 24:6-7 that "the General Counsel has established an initial showing of discrimination," since many of the ALJ's findings are unsupported by the record evidence.

121. Respondent excepts to the ALJ's findings at 24:16-18 that "Respondent's reasons are pretext for discrimination" and that "Armstrong did not give a false report of his activities on the C-shift on August 26," as they are unsupported by the record evidence.

122. Respondent excepts to the ALJ's finding at 24:18-19, that "an adequate investigation . . . would have supported most or all of Armstrong's claims," as it is unsupported by the record evidence.

123. Respondent excepts to the ALJ's findings at 24:19-21 that "Armstrong's prior history of discipline, in combination with the most recent charge, would likely not lead to termination" since it involved only "verbal warnings for minor infractions," as this is pure opinion.

124. Respondent excepts to the ALJ's finding at 25:43-44 that the alleged unlawful surveillance took place "at a close vantage point," as it is unsupported by any citation to record evidence.

125. Respondent excepts to the ALJ's finding at 26:6-8 that "there is no persuasive evidence to show that the Respondent had a reasonable basis for believing that the no solicitation or no trespassing policies were being violated," as it is unsupported by the record evidence.

126. Respondent excepts to paragraph 1(b) of the Order (32:26) and the related Conclusion No. 6 (31:22-24) that Respondent interrogated employees about their union membership, activities, and sympathies, as it is unsupported by the record evidence.

127. Respondent excepts to paragraph 1(e) of the Order (32:30-34) and the related Conclusion No. 7 (31:26-28) that Respondent threatened adverse employment consequences against employees and/or threatened not to hire employees' relatives because the employees engaged in union or other protected concerted activities, as it contradicts the ALJ's own finding to the contrary. *See* Decision at 27:34-35.

128. Respondent excepts to the actions of the General Counsel and ALJ in reaffirming the decisions of their predecessors and/or their own decisions as lacking any substantive, meaningful review or reconsideration. The General Counsel and ALJ's failure to remedy the inexplicable

internal inconsistency and error described in Respondent's Exception 127, *supra*, demonstrates the sham nature of the remand and reaffirmation proceedings. In her prior Decision that has now be ratified and adopted without alteration, the ALJ contradicted herself by finding as a fact that the General Counsel introduced no evidence to support an allegation in the complaint but nonetheless concluded that the Respondent committed the alleged violation despite there being no evidence to support the allegation. Had the purported remand and associated review and reaffirmation been meaningful or substantive, as opposed to a sham, the ALJ surely would have corrected this obvious flaw in the Decision.

129. Respondent excepts to the ALJ's findings at 29:25-29 that Respondent's management engaged in "intense efforts to disrupt the union organizing campaign [including] . . . consults with attorneys, [and] discussions and meetings with management staff to discover the extent of the union campaign and its supporters," as they mischaracterize testimony and are irrelevant.

130. Respondent excepts to the ALJ's finding at 29:32-35 that "Spalding clearly implied that . . . investment in the plant would be jeopardize [sic] by a union," as it is irrelevant to a finding that Spalding threatened to close the plant.

131. Respondent excepts to the ALJ's findings at 29:39-41 that Spalding "both times" ended his speech with a "warning that he would continue to hold similar mandatory meetings if the workers' [sic] did not end the union organizing effort by refusing to support it," as it mischaracterizes the plain language of the script, is pure opinion, and is irrelevant.

132. Respondent excepts to paragraph 1(f) of the Order (32:36-37) and the related Conclusion No. 8 (31:30-32) that Respondent posted literature threatening employees with permanent job loss if replaced by new hires during a strike, as it is unsupported by the record evidence.

DATED: May 20, 2016

s/ Chris Mitchell
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Exceptions to the Decision of the Administrative Law Judge were served on all parties listed pursuant to the National Labor Relations Board's Rules and Regulations 102.114(i) by electronically filing with the Office of the Executive Secretary and email on this the 19th day of May 2016.

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